Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____July 21, 2005_____ Signature_____ Typed or printed name ___David H. Judson___	Application Number 09/919,302	Filed July 31, 2001
	First Named Inventor Sarley	
	Art Unit 3623	Examiner Stimpak

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
    Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☑ attorney or agent of record.
Registration number ___30,467___

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Signature

Typed or printed name
David H. Judson

Telephone number
972-385-2018

Date
July 21, 2005

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☑ *Total of ___1___ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

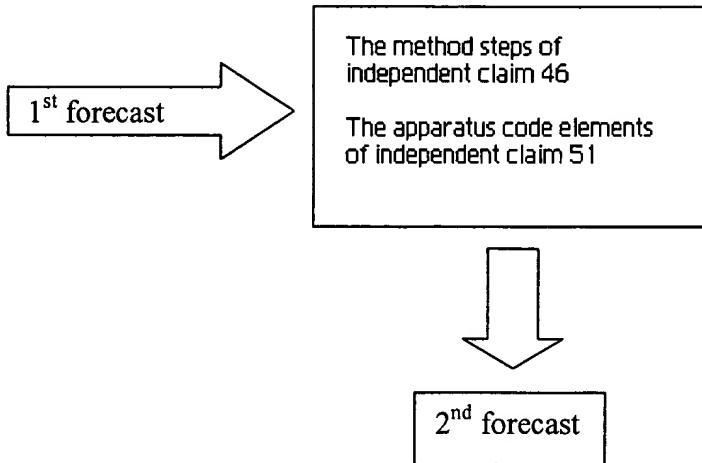|	
Applicant:	Sarlay et al.
Serial Number:	09/919,302
Filing Date:	July 31, 2001
Art Unit:	3623
Examiner:	Johnna Stimpak
For:	**METHOD FOR FORECASTING AND MANAGING MULTIMEDIA CONTACTS**

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Workforce management systems are known in the art, and it is also known that such systems generate forecasts of call received volumes and call handling times based on historical data to determine how much staff will be needed at different times of the day and week, and further that such systems then create schedules that match the staffing to the anticipated needs. Applicants are not attempting to claim this prior art approach. In contrast, the present invention is claiming an <u>improvement</u> to such schemes whereby <u>an</u> additional level of forecasting is done. In particular, each independent claim refers to <u>two distinct forecasts</u>, a first forecast, and a second forecast. The first forecast is a forecast of contact load <u>expected to be received</u> in each of a set of future time periods within a given future time range; in contrast, the second forecast is a forecast of contact load <u>expected to be handled</u> in each of the set of future time periods within the given future time range. The second forecast, in effect, is derived (or adapted from) the data in the first forecast through the method steps or apparatus elements (code) that are affirmatively recited in the independent claims, as illustrated below:

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┌──────────────────────────────────┐
│  The method steps of             │
│  independent claim 46            │
│                                  │
│  The apparatus code elements     │
│  of independent claim 51         │
│                                  │
└──────────────────────────────────┘
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1st forecast →

↓

2nd forecast

This process is neither remotely disclosed nor suggested by the art of record.

Claims stand formally rejected under § 103(a) as being unpatentable in view of the "product of Pipkins" referred to as "Maxima Advantage" in the following <u>Business Wire</u> product announcements:

"Mustang.com and Pipkins Join Forces In eService Workshop Management" – dated December 23, 1999, <u>Business Wire</u>; and

"Pipkins Teams with Mustang.com to Enable Call Center Agents to Integrate Phone Call and Email Function" – dated March 16, 2000, <u>Business Wire</u>.

Any rejection based merely on the "product of Pipkins" is legally unsupportable, however, as there no evidence in this record that any such product <u>had the specific functionality required by the pending claims</u> – clauses (d)-(e) in claim 46 being merely representative. The Examiner does not meet the Office's burden to establish a *prima facie* case of obviousness by arguing that the two Business Wire accounts about the Maxima Advantage "product" (the press accounts themselves being <u>silent</u> as to how the product actually works) means that the product has (or must have) the features of the claimed invention. *The Business Wire accounts are not prior art as to the actual structural and functional characteristics of the Maxima Advantage product unless those characteristics <u>are expressly described in the published documents</u>, and they are not.*

The prior art approach (including that implemented by Pipkins Maxima Advantage) is to merely schedule staffing to handle a given multimedia contact within a given interval in which the contact is received. This is no different from the well-known way in which

call center workforce management systems handled incoming telephone calls. It is not, however, the approach claimed. Rather, in representative claim 46, the inventive technique actually creates a separate, new forecast – what is referred to in the amended claims as a forecast of the number of contacts to handle. As described above, this second forecast (using the claimed method steps or apparatus code elements) is adapted (or derived) from a forecast of contacts expected to be received. Thus, the claims now clearly identify each of the first and second forecasts explicitly, and further how the second forecast is generated. Thus, generation of the second forecast begins based on a given service level goal "describing a maximum amount of time that may occur between receipt of a given contact and handling of the given contact." According to the inventive technique, "for a given future time period of the first forecast," the given service level goal is used "to identify a number of time periods over which the contact load in that given future period may be distributed." A "given function" is then applied to the "contact load to allocate it over a given set of the identified number of time periods." (This allocation is referred to in the written description as propagation). This process is iterated for additional future time periods within the given future time range; then, with respect to a given future time period, the contact load that has been allocated thereto is aggregated. In this manner, the aggregate contact load comprises the second forecast – a forecast of the number of contacts to handle. Only then does the workforce management system determine how much staff will be needed at different times of the day and week (neither method claim 46 nor apparatus claim 51 requires this additional step).[1]

The December 23, 1999 Business Wire release just states that the Pipkins Maxima Advantage system enables the user to "forecast e-mail customer service representative (CSR) staffing requirements" and that the system can be used "to intelligently manage [an] e-mail customer service workforce, ensuring service level goals are met in the most cost-effective manner possible." (See, Business Wire Release, at paragraphs 4-5). This is not a description of the specific "contacts to handle" forecast generation technique that is affirmatively described in either independent claim 46 or 51.

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[1] Thus, as compared to the prior art, the staffing requirements are generated using the second forecast, not the first forecast.

Likewise, the March 16, 1999 Business Wire release makes the same statements and goes on to say that "the integrated system will provide Pipkins with incoming e-mail information such as e-mail offered, average handling time, and service level achieved. This information will enable a supervisor to staff e-mail response handling more efficiently." (See, Business Wire Release, at paragraphs 14-15). This is a mere description of the use of historical data to generate staffing requirements; it is not a description of the specific "contacts to handle" forecast generation technique that is actually recited either in claim 46 or 51.

At best, the prior art simply suggests taking historical information about the number of contacts expected to be received and then taking the same algorithms used to forecast calls to then forecast the number of contacts that are expected to be received in each given (e.g., 15 or 30 minute) time interval. In contrast, the present invention seeks claim coverage on a method that uses a "first" forecast (e.g., the contacts that are expected to be received in each such time interval) as input to a method (or an apparatus) that generates the "second" forecast that finds the best time to schedule handling of the contacts within a specific time range service level goal. As noted above, to emphasize the distinctive features of the present invention, the first forecast is identified in the claim 46 or claim 51 preamble, as "a first forecast of contact load expected to be received in each of a set of future time periods within a given future time range."

Further, the prior art assumes that contacts are handled in real time. In contrast, the method disclosed and claimed in the present invention is addressed to "contacts that are not required to be serviced by contact center agents in real time," (as described in the claim preamble). The method according to the present invention provides significant advantages in that it enables contact centers to reduce staffing costs, as such contacts need not be handled in real time.

Claim 46 distinguishes over the prior art technique at least in part by specifically describing the steps implemented to create the second forecast. In particular, the claim describes the steps that take place between the first forecast and the step of calculating the staff requirements – namely, the creation of a second forecast of when is the best time to schedule handling of the contacts within a specific time range goal.

Each independent claim 46 and 51 further emphasizes that the first and second forecasts are not the same. In particular, the second forecast is required to differ "from the first forecast in an amount of contact load in at least one future time period."

In considering the question of obviousness, the Examiner did not consider the subject matter of each independent claim, taken as a whole. See, 35 U.S.C. § 103(a). Representative claim 46 describes a set of specific method steps that the Examiner has failed to locate in any of the cited art, and the record evidence establishes that Pipkins itself describes the "product of Pipkins" in the same light as the prior art forecasting techniques. There is no statement or suggestion in the art the sets forth any of the three method steps now positively recited. Thus, the cited product accounts – in of themselves – are insufficient to give rise to a *prima facie* case. Moroever, before the "product of Pipkins" itself is deemed prior art, the Examiner must establish that the product actually had the characteristics positively recited in the claims. The product accounts, as noted above, are virtually silent on this key point and, thus, there was no factual or legal basis for the Examiner to conclude that the "product of Pipkins" (as opposed to the descriptions) meets the standard of a *prima facie* showing either.

Summarizing, a press release announcing a product is not prior art as to the actual structural and functional characteristics of the product unless those characteristics are expressly described in the release. The cited releases do not satisfy this requirement. More to the point, the Examiner has not shown that the "product of Pipkins" (even if it were known or in public use before the Applicants' invention) actually had the characteristics positively recited in the claims. That is why the rejection fails.

Respectfully submitted,
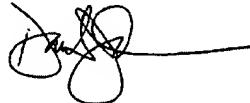
By: _____

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ATTORNEY FOR APPLICANTS